

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

KYLE ANDREW EVERHART,

Defendant.

CASE NO. CR14-5275 BHS

ORDER DENYING  
DEFENDANT'S MOTION

This matter comes before the Court on Defendant Kyle Everhart's ("Everhart") motion to allow independent test of pills (Dkt. 26).

On September 23, 2014, the Court began a two day trial on the Government's charge against Everhart for possession with intent to distribute. Cause No. 13-5512, Dkt. 112. On September 24, 2014, the jury returned a verdict of guilty and specifically found that the offense involved more than 500 grams or more of methamphetamine. *Id.*, Dkt. 120.

On October 27, 2014, Everhart filed a motion requesting that the Court order an independent test of all the pills found during Everhart's arrest. Dkt. 26. Everhart argues

1 that only small amount of pills were tested before trial and that the remaining pills should  
2 be tested to determine the exact amount of methamphetamine for purposes of sentencing.  
3 *Id.* On November 3, 2014, the Government responded and argued that the jury's finding  
4 may only be challenged in a Rule 29 motion, which Everhart did not include in his  
5 previous Rule 29 motion. Dkt. 27. The Court agrees with the Government. Therefore,  
6 the Court **DENIES** Everhart's motion (Dkt. 26).

7 **IT IS SO ORDERED.**

8 Dated this 21<sup>st</sup> day of November, 2014.

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12 BENJAMIN H. SETTLE  
13 United States District Judge  
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